FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 13/2007

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 21, 2007.

Heard Shri Mundhada for the appellant.

The appellant is the original defendant. A suit was filed by the respondent/plaintiff and her two children by name Manoj and Bhimrao, under Section 18 of the Hindu Adoption & Maintenance Act, for grant of maintenance, contending that the defendant/appellant had neglected and refused to maintain them. Since the two sons attained majority during the pendency of the suit, the plaintiffs gave up the claim for their maintenance.

The defendant/appellant did not dispute the factum of marriage between the parties, but pleaded that there was a divorce between the parties on the basis of a *Farkatnama* executed by both the parties on 22/12/1977 and hence the plaintiff cannot claim any property or any maintenance from the defendant. It was also pleaded by the defendant that the plaintiff no. 3-Bhimrao was not the son of the defendant and the plaintiffs were not entitled to any maintenance as the plaintiff no.1 was leading an unchaste life.

The trial Court recorded the findings that the plaintiff no.1 was unable to maintain herself and the defendant/appellant had sufficient means to provide maintenance to her. The Court also held that the defendant failed to prove his case about the execution of *Farkatnama* and the plaintiff-wife leading unchaste life. It is further held that the defendant had refused and neglected to maintain the plaintiff and the plaintiff was entitled to maintenance @ Rs. 400/- per month. The appeal preferred by the defendant/appellant against the judgment passed by the trial Court, was also dismissed.

Shri Mundhada, the learned counsel for the appellant, took this Court through the title clause of the suit filed by the plaintiff-wife, to show that the age of the first son of the plaintiff no.1 was shown to be 16 years and the age of the second son was shown to be 15 years. Thereafter, he brought the attention of this Court to the pleadings in paragraph no.1 of the plaint wherein it was stated that the parties were married about 27 years ago. It was submitted that if these pleadings are taken into consideration, then the marriage between the parties took place approximately in the year 1970 and since the *Farkatnama* was executed in the year 1977, the cause title of the plaint itself was sufficient to prove that the plaintiff-wife was unchaste.

The submissions made on behalf of the appellant are fallacious and unacceptable. Firstly, the defendant/appellant had not pleaded the aforesaid case

in his written statement and secondly, the trial as well as the appellate Court has recorded a categorical finding that the defendant had failed to prove the *Farkatnama* allegedly executed between the parties in the year 1977. Merely on the basis of the title clause of the plaint and the pleadings in paragraph no.1 of the plaint, the defendant is making an endeavour to show that the plaintiff-wife was unchaste and the two sons were not begotten from the marriage solemnized between the parties. On the basis of the submissions made on behalf of the appellant for the first time during the course of arguments in second appeal, the findings of facts cannot be recorded so as to hold the plaintiff-wife unchaste or that the two sons were not born from the wedlock between the plaintiff-wife and the defendant.

Since the findings recorded by the trial and the appellate Courts are pure findings of facts, arrived at after proper appreciation of the evidence on record, the same do not call for any interference. No substantial question of law arises for consideration in this second appeal and hence the second appeal is dismissed with no order as to cost.

JUDGE

RMP